



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Cape Fear Paging Co.

File: B-252160.2

Date: April 28, 1993

Clayton S. Marsh, Esq., Ropes & Gray, for the protester.
Charles H. Carpenter, Esq., Pepper, Hamilton & Scheetz, for
Cue Paging Corporation, an interested party.
Gerald P. Kohns, Esq., and Frederick M. Lewis, Esq.,
Department of the Army, for the agency.
Catherine M. Evans, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly substantially revised solicitation requirement when only two offerors remained in the competitive range, instead of issuing new solicitation for revised requirement to all potential offerors, including the protester, is dismissed where revision merely altered price schedule and did not make any changes to the services required by the statement of work.

DECISION

Cape Fear Paging Co. protests the Department of the Army's amendment of request for proposals (RFP) No. DAKF23-92-R-0208, instead of issuing a new solicitation. Cape Fear contends that the agency improperly amended the solicitation for pagers and paging services after it eliminated Cape Fear and other offerors from the competitive range.

We dismiss the protest.

The RFP, issued on May 28, 1993, contemplated award of a firm-fixed-price contract to furnish 676 paging devices and related network services. One of the required services was a voice messaging capability for all pagers using a toll-free "800" number.¹ As originally issued, the RFP's price schedule contained a single line item for monthly network

¹This service allows a caller to leave a message in a voice "mailbox." The voice mailbox then dials the number and access code for the recipient's pager. Once alerted to the existence of a message, the recipient then can telephone the voice mailbox to retrieve the message.

services, including the 800 service for voice messaging. On August 11, the agency amended the price schedule to add a separate line item to the schedule for the 800 service. The new line item set forth an estimated number of calls--270,400 for the 10-month base period and 324,480 for the 1-year option periods--and required an estimated monthly price for the service. The amendment stated that the contractor would be paid based on the actual number of calls made each month.

Eight firms submitted offers by the August 25 closing date. Five of the offers, including Cape Fear's, were eliminated from the competitive range because they did not include technical proposals as required by the RFP. Subsequent to the competitive range determination, the agency amended the RFP's price schedule to delete the separate line item for 800 service (CLIN 0001AA), along with the estimated number of 800 calls which appeared in the CLIN. The requirement for 800 service remained in the statement of work; offerors apparently were expected to include the price for this service in the monthly price for all services.

Cape Fear learned of its elimination from the competitive range on December 29. On January 8, 1993, Cape Fear learned that the RFP had been amended to change the approach to 800 service.² Cape Fear filed an agency-level protest on January 11, alleging that the amendment reflected a significant change in the agency's requirements such that a new solicitation was required. The contracting officer denied the protest on January 15, essentially concluding that the changes to the RFP schedule did not warrant a new solicitation. Cape Fear then filed this protest.

As a preliminary matter, we reject an argument by the Army that Cape Fear is not an interested party to protest the agency's action because it was eliminated from the competitive range and therefore is not eligible for award. Under our Bid Protest Regulations, an interested party is generally defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by failure to award a contract. 4 C.F.R. § 21.0(a) (1993). Where a protester would not be in line for an award even if we were to resolve the protest in its favor, as is sometimes the case where the protester is not in the competitive range, the firm lacks standing as an interested party. Advanced Health Sys.--Recon., B-246793.2, Feb. 21, 1992, 92-1 CPD ¶ 214. That is not the

²Not having seen the actual amendment until after it filed its protest, Cape Fear initially (incorrectly) believed that the amendment reduced the voice messaging requirement from serving all 676 pagers to serving only 13 pagers.

case here. As Cape Fear is seeking cancellation and resolicitation of the procurement, it is an interested party since, if it prevails, it will have the opportunity to compete under the new solicitation. See Inter-Con Security Sys., Inc., B-235248; B-235248.2, Aug. 17, 1989, 89-2 CPD ¶ 148.

Cape Fear asserts that the deletion of the estimated quantities of 800-service calls from the price schedule had the effect of substantially reducing the agency's requirement for the service from the 270,400 and 324,480 estimated calls to some lesser amount. Cape Fear maintains that this substantial reduction in required service would increase competition by allowing smaller firms to compete effectively with larger firms, and concludes that the Army should have issued a new solicitation instead of limiting competition for the changed requirement to those offerors already in the competitive range.

Federal Acquisition Regulation § 15.606(b)(4) provides that a solicitation shall be canceled and a new one issued when changes in the agency's requirements are so substantial that complete revision of the solicitation is warranted. Contrary to the premise of Cape Fear's argument, however, our examination of the RFP and amendments reveals no material changes in the Army's requirements after Cape Fear was eliminated from the competition; the RFP contained the same requirement for voice messaging before and after Cape Fear was eliminated from the competitive range. In this regard, amendment 0005, which added the separate line item for 800 service, and to which Cape Fear responded in its offer, stated the voice messaging requirement as follows:

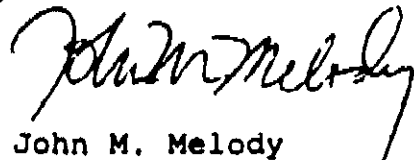
"C.1.2. Service shall offer voice mailbox capable of storing voice messages and provide a numeric page to alert the pager user of a voice message awaiting retrieval. This service is intended to use 800 numbers and to be paid under CLIN 0001AA [the separate line item for the service]. No additional advance features are required."

Amendment 0006 did not change the substance of this 800 service requirement provision, but merely deleted the reference to CLIN 0001AA in the second sentence and eliminated the separate line item for 800-service prices. This combining of prices for all required services into a single line item in no way suggests that the quantity of 800 service was reduced, and the record contains no evidence that such a reduction was intended. More specifically, there is no basis on this record for concluding that deleting the 800-service estimate reflected an intent to reduce the quantity rather than, for instance, a realization that deleting the CLIN made the estimate unnecessary for

price evaluation, the reason it presumably was added by amendment 0005 in the first place.

We conclude that the agency's requirement was not changed by amendment 0006 such that a resolicitation was required. See J.M. Yurick Assocs., Inc., B-242138, Dec. 20, 1990, 90-2 CPD ¶ 511.

The protest is dismissed.

A handwritten signature in cursive script, appearing to read "John M. Melody".

John M. Melody
Assistant General Counsel